

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

BRUCE DERRICK CALHOUN,

v.

SAN DIEGO COUNTY, et al.,

Plaintiff,

Defendant.

Case No. 11cv1271 BTM(WMC)

**ORDER GRANTING MOTION TO
PROCEED IN FORMA PAUPERIS;
DISMISSING COMPLAINT FOR
FAILURE TO STATE A CLAIM;
DENYING MOTION FOR
APPOINTMENT OF COUNSEL**

On June 9, 2011, Plaintiff filed a Complaint, a Motion to Proceed In Forma Pauperis ("IFP Motion"), and a Motion for Appointment of Counsel. For the reasons discussed below, the IFP Motion is granted, the Complaint is dismissed with leave to amend, and the Motion for Appointment of Counsel is denied without prejudice.

I. DISCUSSION

A. Motion to Proceed IFP

Upon review of Plaintiff's affidavit in support of his IFP Motion, the Court finds that Plaintiff has made a sufficient showing of inability to pay the filing fees required to prosecute this action. Accordingly, Plaintiff's IFP Motion is **GRANTED**.

B. Failure to State a Claim

Although the Court will allow Plaintiff to proceed IFP, Plaintiff's Complaint must be dismissed for failure to state a claim. The Court is under a continuing duty to dismiss an IFP case whenever the Court determines that the action "fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

1 Plaintiff's Complaint is incomprehensible and appears to be frivolous. Therefore, the
2 Court dismisses Plaintiff's Complaint for failure to state a claim. The Court grants Plaintiff
3 leave to file an amended complaint on or before **August 5, 2011**. Failure to do so will result
4 in the closing of this case.

5
6 C. Appointment of Counsel

7 There is no right to counsel in civil cases, and district courts may appoint counsel only
8 under "exceptional circumstances." Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991).
9 "A finding of exceptional circumstances requires an evaluation of both 'likelihood of success
10 on the merits and the ability of the plaintiff to articulate his claims pro se in light of the
11 complexity of the legal issues involved.' Neither of these issues is dispositive and both must
12 be viewed together before reaching a decision." Id.

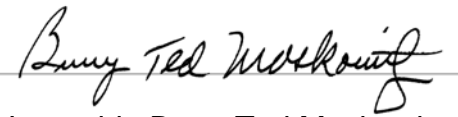
13 At this point in time, the Court cannot say that there is any likelihood of success on
14 the merits. Therefore, the Court **DENIES** without prejudice Plaintiff's Motion for Appointment
15 of Counsel.

16
17 **II. CONCLUSION**

18 Plaintiff's Motion to Proceed IFP is **GRANTED**. Plaintiff's Motion for Appointment of
19 Counsel is **DENIED** without prejudice. Plaintiff's Complaint is **DISMISSED** without prejudice
20 for failure to state a claim upon which relief may be granted. Plaintiff may file a First
21 Amended Complaint on or before **August 5, 2011**. If Plaintiff fails to do so, the Court shall
22 close this case.

23 **IT IS SO ORDERED.**

24 DATED: July 22, 2011

25 
26 Honorable Barry Ted Moskowitz
27 United States District Judge
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